Message

From: Tanner, Barbara [Tanner.Barbara@epa.gov]
Sent: 4/30/2019 7:16:01 PM
To: Faeth, Lisa [Faeth.Lisa@epa.gov]; Anderson, Steve [Anderson.Steve@epa.gov]; Askinazi, Valerie [Askinazi.Valerie@epa.gov]; Baptist, Erik [Baptist.Erik@epa.gov]; Barkas, Jessica [barkas.jessica@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Blair, Susanna [Blair.Susanna@epa.gov]; Buster, Pamela [Buster.Pamela@epa.gov]; Canavan, Sheila [Canavan.Sheila@epa.gov]; Caraballo, Mario [Caraballo.Mario@epa.gov]; Carroll, Megan [Carroll.Megan@epa.gov]; Cherepy, Andrea [Cherepy.Andrea@epa.gov]; Christian, Myrta [Christian.Myrta@epa.gov]; Corado, Ana [Corado.Ana@epa.gov]; Davies, Clive [Davies.Clive@epa.gov]; Dekleva, Lynn [dekleva.lynn@epa.gov]; Devito, Steve [Devito.Steve@epa.gov]; Doa, Maria [Doa.Maria@epa.gov]; Drewes, Scott [Drewes.Scott@epa.gov]; Dunn, Alexandra [dunn.alexandra@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Edelstein, Rebecca [Edelstein.Rebecca@epa.gov]; Edmonds, Marc [Edmonds.Marc@epa.gov]; Elwood, Holly [Elwood.Holly@epa.gov]; Fan, Shirley [Fan.Shirley@epa.gov]; Farquharson, Chenise [Farquharson.Chenise@epa.gov]; Fehrenbacher, Cathy [Fehrenbacher.Cathy@epa.gov]; Feustel, Ingrid [feustel.ingrid@epa.gov]; Frank, Donald [Frank.Donald@epa.gov]; Gibson, Hugh [Gibson.Hugh@epa.gov]; Gimlin, Peter [Gimlin.Peter@epa.gov]; Gorder, Chris [Gorder.Chris@epa.gov]; Gordon, Brittney [Gordon.Brittney@epa.gov]; Grant, Brian [Grant.Brian@epa.gov]; Gray, Shawna [Gray.Shawna@epa.gov]; Groeneveld, Thomas [Groeneveld.Thomas@epa.gov]; Guthrie, Christina [Guthrie.Christina@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]; Helfgott, Daniel [Helfgott.Daniel@epa.gov]; Henry, Tala [Henry.Tala@epa.gov]; Kapust, Edna [Kapust.Edna@epa.gov]; Kemme, Sara [kemme.sara@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]; Krasnic, Toni [krasnic.toni@epa.gov]; Lavoie, Emma [Lavoie.Emma@epa.gov]; Lee, Mari [Lee.Mari@epa.gov]; Lee, Virginia [Lee.Virginia@epa.gov]; Leopard, Matthew (OEI) [Leopard.Matthew@epa.gov]; Liva, Aakruti [Liva.Aakruti@epa.gov]; Lobar, Bryan [Lobar.Bryan@epa.gov]; Mclean, Kevin [Mclean.Kevin@epa.gov]; Menasche, Claudia [Menasche.Claudia@epa.gov]; Morris, Jeff [Morris.Jeff@epa.gov]; Moss, Kenneth [Moss.Kenneth@epa.gov]; Mottley, Tanya [Mottley.Tanya@epa.gov]; Moyer, Adam [moyer.adam@epa.gov]; Myers, Irina [Myers.Irina@epa.gov]; Myrick, Pamela [Myrick.Pamela@epa.gov]; Nazef, Laura [Nazef.Laura@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Owen, Elise [Owen.Elise@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Passe, Loraine [Passe.Loraine@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Pratt, Johnk [Pratt.Johnk@epa.gov]; Price, Michelle [Price.Michelle@epa.gov]; Reese, Recie [Reese.Recie@epa.gov]; Reisman, Larry [Reisman.Larry@epa.gov]; Rice, Cody [Rice.Cody@epa.gov]; Richardson, Vickie [Richardson.Vickie@epa.gov]; Ross, Philip [Ross.Philip@epa.gov]; Sadowsky, Don [Sadowsky.Don@epa.gov]; Santacroce, Jeffrey [Santacroce.Jeffrey@epa.gov]; Saxton, Dion [Saxton.Dion@epa.gov]; Scarano, Louis [Scarano.Louis@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Schmit, Ryan [schmit.ryan@epa.gov]; Schweer, Greg [Schweer.Greg@epa.gov]; Scott Selken [spselken@up.com]; Scott, Elizabeth [Scott.Elizabeth@epa.gov]; Selby-Mohamadu, Yvette [Selby-Mohamadu.Yvette@epa.gov]; Seltzer, Mark [Seltzer.Mark@epa.gov]; Sheehan, Eileen [Sheehan.Eileen@epa.gov]; Sherlock, Scott [Sherlock.Scott@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Sirmons, Chandler [Sirmons.Chandler@epa.gov]; Slotnick, Sue [Slotnick.Sue@epa.gov]; Smith, David G. [Smith.DavidG@epa.gov]; Smith-Seam, Rhoda [smith-seam.rhoda@epa.gov]; Stedeford, Todd [Stedeford.Todd@epa.gov]; Stevens, Katherine [stevens.katherine@epa.gov]; Strauss, Linda [Strauss.Linda@epa.gov]; Symmes, Brian [Symmes.Brian@epa.gov]; Thompson, Tony [Thompson.Tony@epa.gov]; Tierney, Meghan [Tierney.Meghan@epa.gov]; Tillman, Thomas [Tillman.Thomas@epa.gov]; Tomassoni, Guy [Tomassoni.Guy@epa.gov]; Tran, Chi [Tran.Chi@epa.gov]; Turk, David [Turk.David@epa.gov]; Vendinello, Lynn [Vendinello.Lynn@epa.gov]; Wallace, Ryan [Wallace.Ryan@epa.gov]; Wheeler, Cindy [Wheeler.Cindy@epa.gov]; Widawsky, David [Widawsky.David@epa.gov]; Williams, Aresia [Williams.Aresia@epa.gov]; Williams, Bridget [Williams.Bridget@epa.gov]; Williamson, Tracy [Williamson.Tracy@epa.gov]; Wills, Jennifer [Wills.Jennifer@epa.gov]; Wise, Louise [Wise.Louise@epa.gov]; Wolf, Joel [Wolf.Joel@epa.gov]; Wright, Tracy [Wright.Tracy@epa.gov]; Yowell, John [yowell.john@epa.gov]; Tanner, Barbara [Tanner.Barbara@epa.gov]
Subject: News Articles (For EPA Distribution Only)

GREENWIRE ARTICLES

Wheeler talks permitting at closed-door event

Maxine Joselow, E&E News reporter Published: Tuesday, April 30, 2019

EPA Administrator Andrew Wheeler is seen here at agency headquarters earlier this month. Timothy Gardner/Reuters/Newscom

EPA Administrator Andrew Wheeler today discussed infrastructure permitting at a closed-door event featuring other Trump administration officials.

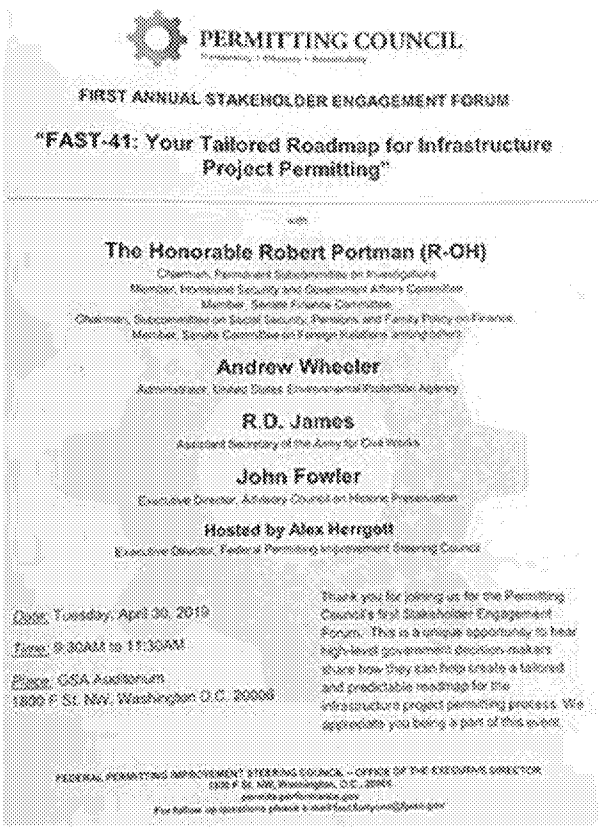
The event at the General Services Administration was closed to the press, and an E&E News reporter was barred from the room and later escorted from the building.

Wheeler was slated to talk about streamlining the permitting process for complex projects, according to an **event invitation** obtained by E&E News.

Other featured speakers included R.D. James, assistant secretary of the Army for civil works, and Alex Herrgott, executive director of the Federal Permitting Improvement Steering Council, according to the invitation.

Sen. Rob Portman (R-Ohio), chairman of the Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations, also delivered opening remarks, according to an updated agenda provided to E&E News by an attendee.

The event was billed as the Federal Permitting Improvement Steering Council's first "Stakeholder Engagement Forum." The council is tasked with improving interagency consultation and coordination on complex infrastructure projects.


PERMITTING COUNCIL

FIRST ANNUAL STAKEHOLDER ENGAGEMENT FORUM

"FAST-41: Your Tailored Roadmap for Infrastructure Project Permitting"

with

The Honorable Robert Portman (R-OH)

Chairman, Permanent Subcommittee on Investigations
Member, Homeland Security and Governmental Affairs Committee
Member, Senate Finance Committee
Chairman, Subcommittee on Social Security, Pensions, and Family Policy on Finance
Member, Senate Committee on Foreign Relations (among others)

Andrew Wheeler

Administrator, United States Environmental Protection Agency

R.D. James

Assistant Secretary of the Army for Civil Works

John Fowler

Executive Director, Advisory Council on Historic Preservation

Hosted by Alex Herrgott

Executive Director, Federal Permitting Improvement Steering Council

Date: Tuesday, April 30, 2019

Time: 9:30AM to 11:30AM

Place: GSA Auditorium
1800 F St. NW, Washington D.C. 20006

Thank you for joining us for the Permitting Council's first Stakeholder Engagement Forum. This is a unique opportunity to hear high-level government decision-makers share how they can help create a tailored and predictable roadmap for the infrastructure project permitting process. We appreciate you being a part of this event.

FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL – OFFICE OF THE EXECUTIVE DIRECTOR
1800 F St. NW, Washington, D.C. 20405
permits.performance.gov
For follow up questions please e-mail [redacted]@fpisc.gov

The agenda for today's infrastructure permitting event. Maxine Joselow/E&E News

President Trump tapped Herrgott as executive director of the council in September 2018. The executive director role was created as part of the Fixing America's Surface Transportation Act (FAST-41), which President Obama signed into law in 2015 (***E&E News PM***, Sept. 21, 2018).

The invitation described the event as a "unique opportunity to hear high-level government decision-makers share how they can help create a tailored and predictable roadmap for the infrastructure permitting process."

It added that "industry leaders will also be on hand to discuss how the Permitting Council's assistance successfully brings clarity to the process that stakeholders can rely on."

The invitation did not mention that the event was closed-press. But an E&E News reporter was denied entry to the auditorium in the General Services Administration where the event took place.

Matthew Burrell, a press assistant with GSA, later escorted the E&E News reporter out of the building. Burrell said questions about the event could be directed to GSA's press office.

In response to an emailed list of questions, GSA press secretary Pamela Pennington said, "This was a stakeholder-only event put on by the Federal Improvement Permitting Steering Council. This event was always a closed media event and there were signs posted that it was closed media as well. Also there was a required registration date that had to be adhered to."

Pennington didn't respond to a follow-up inquiry seeking a list of industry attendees and a recording of the discussion.

Scott Slesinger, legislative director at the Natural Resources Defense Council and an expert on project permitting, was one of a few environmentalists invited to the event.

Environmentalists and progressives have expressed concern that the Trump administration's efforts to speed up project approvals should not undermine environmental protections or bedrock laws such as the National Environmental Policy Act.

Slesinger told E&E News after the event that Herrgott primarily focused on outlining the permitting process for states and project sponsors.

"It was mostly how they work, how they plan to work, how they do things," Slesinger said in an interview. "Alex made a good point that these things of coordinating, having agencies talk to each other, should not have needed a statute anyway. That should have just been the way things were."

He added, "Frankly, I didn't hear anything that should have been kept from the press. And it may have been helpful to publicize."

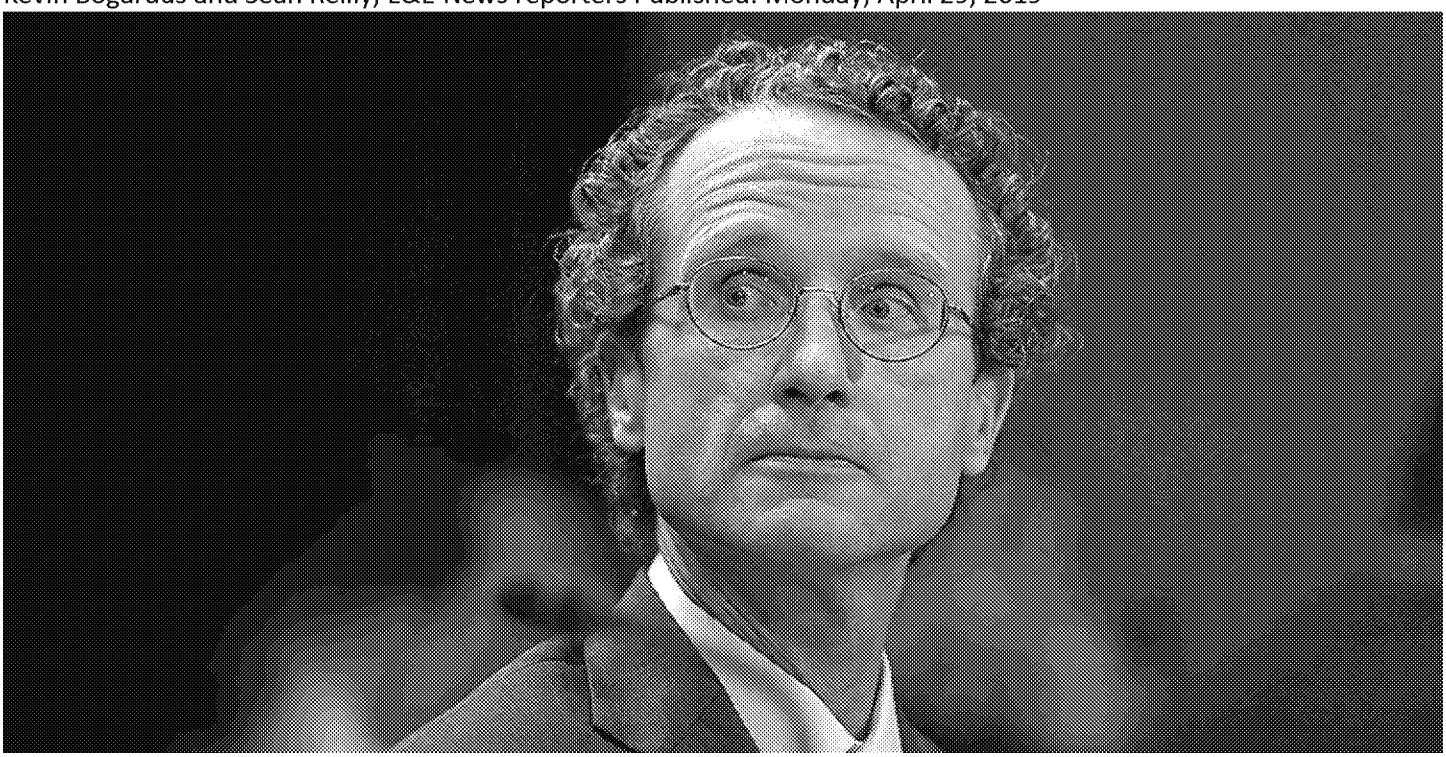
Several officials from the White House Council on Environmental Quality were sitting in the front row, Slesinger confirmed. CEQ is currently drafting guidance on how to consider greenhouse gas emissions under NEPA after the Trump administration rescinded Obama-era guidance on the subject (***Greenwire***, Feb. 8).

Wheeler said in a **tweet** after the event, "At the Federal Permitting Improvement Steering Council this morning I explained that many infrastructure projects are critical to environmental protection. President Trump @POTUS understands the importance of infrastructure for both the economy and the environment."

https://www.eenews.net/greenwire/2019/04/30/stories/1060246925

The inside ethics advice for air chief

Kevin Bogardus and Sean Reilly, E&E News reporters Published: Monday, April 29, 2019



EPA air chief Bill Wehrum testifies before the Senate Environment and Public Works Committee in October 2017. Ron Sachs/dpa/picture-alliance/Newscom

EPA ethics officials drafted multiple recusal statements for Bill Wehrum, the agency's air chief whose industry ties have attracted scrutiny.

Records obtained by E&E News under the Freedom of Information Act shed some light on the ethics considerations behind Wehrum's dealings with companies and trade groups with interests regulated by EPA as well as the 10-month process to have him sign a recusal statement.

Sworn in at EPA in November 2017, the agency's ethics officials soon began to work on drafting such a statement for Wehrum that would list his potential conflicts of interests with the multitude of clients he represented in private practice.

"We will also need to start working on his recusal statement," said Justina Fugh, EPA's senior counsel for ethics, in an **email** the day after Wehrum was sworn in.

About a week later, Wehrum was **sent** a recusal statement and asked to meet to discuss its terms. More drafts would follow.

In March last year, Josh Lewis, chief of staff for EPA's air office, sent Wehrum a recusal statement dated that month. "Bill, Attached is the latest draft of your recusal," he said in an **email**.

Fugh **shared** another recusal statement dated last May with Kevin Minoli, then EPA's top career lawyer and designated agency ethics official. The email's subject line read, "that Wehrum thing."

Months later in July, she **emailed** Wehrum a revised recusal dated that month. "Hi Bill, Attached is a draft recusal statement to be sent by you to the Acting Administrator," Fugh said, referring to Andrew Wheeler, who has now been confirmed as head of EPA.

Those efforts to have Wehrum sign a recusal statement were not successful. The next month in August, *The New York Times* **reported** the head of EPA's air office was declining to sign such a document.

"I have gotten three different interpretations, and what I don't want to do is sign a recusal letter and then have the rules change again," he told the newspaper.

Wehrum, however, did sign a recusal statement the following month.

Calling the EPA air chief "a walking conflict of interest," Sen. Sheldon Whitehouse (D-R.I.) said at a Senate Environment and Public Works Committee markup last September that he was preparing to offer an amendment to force Wehrum to provide a recusal but withdrew the measure after the agency official signed the **document**. Wehrum's recusal statement, dated Sept. 17 last year, included his obligations to avoid particular EPA matters dealing with roughly 40 ex-clients and his former law firm, now known as Hunton Andrews Kurth LLP (***Greenwire***, Sept. 18, 2018).

Emails show Wehrum was still searching for something to sign that night. "I have not received a draft. Is there someone I should contact?" he said in one **message**.

"Bill, this version is ready for signature," wrote Matt Leopold, EPA's general counsel, attaching the latest recusal statement to his **email**.

Other top EPA officials, who like Wehrum had been involved in litigation against the agency or had clients overseen by its regulations, moved much quicker on their recusal statements.

Former EPA Administrator Scott Pruitt signed his **recusal** more than two months after being sworn in. Wheeler signed his **statement** the month following his confirmation as deputy administrator.

Asked about Wehrum's multiple recusal statements, EPA spokesman James Hewitt said, "Mr. Wehrum previously shared he was concerned by the lack of clarity surrounding the different recusal letters. He has since signed a recusal letter."

Wehrum's former clients seek his time at EPA

Wehrum spent six years in EPA's Office of Air and Radiation under President George W. Bush. After leaving in 2007, he built a lucrative law practice representing businesses and trade groups.

In a financial disclosure **report** signed by him before President Trump nominated him in September 2017 to head the agency air office, Wehrum said he received compensation for legal services from nearly 20 corporations and business associations.

Soon after, he won Senate confirmation for the post two months later, some were knocking on his door.

"Good morning, Bill, I hope you're settling in nicely," Richard Moskowitz, general counsel for the American Fuel & Petrochemical Manufacturers, wrote in an **email** in early December 2017.

"AFPM would like to schedule a meeting with you and your team to discuss state ZEV mandates," Moskowitz continued, using an acronym for "zero emission vehicles." "Would you please reply to this email with some times that work for you and your team?"

Not long before, Hilary Moffett, then the head of federal relations for the American Petroleum Institute, had also come calling, saying in an **email** to another EPA staffer that a group of people from some of the organization's member companies wanted a meeting with Wehrum "to discuss priorities."

Wehrum's calendar for those months, previously provided to E&E News in response to a separate FOIA request, does not reflect meetings with either trade group. AFPM and API are listed as former clients of Wehrum's on his recusal statement.

An AFPM spokeswoman told E&E News that the meeting did not take place.

Asked about its meeting request, API said, "API regularly engages with officials at all levels of the administration on public policies that will strengthen our country, and benefit all American workers, consumers, and the environment."

Hewitt said, "As you know, Mr. Wehrum's calendar is made publicly available online."

Emails show Wehrum was advised to stay clear of his former law firm and clients and also how his ethics considerations created considerable workload at the agency.

He forwarded on all kinds of meeting requests and invitations to ethics officials, including **one** to the National Association of Manufacturers' holiday party. One invitation asking Wehrum to speak at the American Coke and Coal Chemicals Institute fall meeting last year sparked much discussion.

"Bill should remember not to engage in any 'side bar' discussions with Hunton on any particular matters that involve the firm or their clients," said one EPA staffer in an **email** about the meeting.

EPA officials were aware of Wehrum's industry ties and sometimes tried to have others at the agency respond. After the Truck Trailer Manufacturers Association Inc. requested a meeting, it was discovered that Wehrum and his senior counsel David Harlow's old law firm were part of a court case that involved the group.

"Bill/David can't take the meeting," Lewis said in an **email**. "Our plan is to respond to the attached and let them know Mandy/Clint are available for the meeting."

Clint Woods is a deputy assistant administrator in EPA's air office. Mandy Gunasekara was the office's principal deputy assistant administrator but resigned to run a nonprofit group in support of President Trump's energy policies.

Records show that EPA last year sought to emphasize ethics when scheduling meetings for its top political appointees. More ethics training was offered as well as guidance in how to vet agency meetings.

In one **communication** entitled "Embedding Ethics into Your Calendaring Process," Minoli, who has since left the agency to practice private law, said ethics officials hoped to help prevent conflicts of interests by including ethics review when scheduling principals.

"The best way to help you identify and resolve ethics issues with your calendars is to work more closely with your ethics officials," Minoli wrote, encouraging officials "to embed ethics in the vetting process of your calendar," such as screening for obligations under one's recusal statement.

Hewitt with EPA noted, "This email was addressed to all EPA principals and wasn't specific to any individual employee."

Democrats investigate

Wehrum's meetings inside and out of EPA have attracted scrutiny from Capitol Hill. Congressional Democrats have homed in on Wehrum's activities of interest to two Hunton clients: DTE Energy Co., a Detroit-based utility, and the Utility Air Regulatory Group, a trade organization that regularly challenges air pollution regulations.

His calendars show that in December 2017, Wehrum gave a speech at his former law firm that included UARG in the audience. DTE is a former member of the group. Wehrum addressed regulations affecting power plants and other sources of air pollution, according to the records (***Greenwire***, June 13, 2018).

Sens. Whitehouse and Tom Carper (D-Del.) as well as Rep. Frank Pallone (D-N.J.) **asked** the EPA Office of Inspector General to investigate whether Wehrum and Harlow broke federal ethics law by getting involved in a regulatory policy shift important to DTE. During the Obama administration, the utility had spent years battling EPA in court over whether a power plant overhaul qualified as a "major modification" that required a preconstruction permit under EPA's New Source Review program.

After the company twice lost before the 6th U.S. Circuit Court of Appeals, then-EPA Administrator Scott Pruitt highlighted the litigation in a December 2017 memo announcing the agency would no longer challenge companies' forecasts of the emissions increases expected from plant upgrades or other projects. That issue had been at the crux of DTE's legal challenge.

Both Wehrum and Harlow were sent a version of the memo shortly before it was released, according to emails cited in Whitehouse's request, although another EPA appointee said she had redacted potentially offending language "given your recusal issues."

In a February **interview** with *The Washington Post*, Wehrum acknowledged discussing the memo with colleagues before its release but said his involvement had been limited to a discussion of a 2002 set of air rules dating back to his prior stint at the air office under Bush.

EPA IG spokesman Jeff Lagda told E&E News that the Democratic lawmakers' request for investigation "is still currently under review by acting EPA IG Chuck Sheehan and his leadership team."

"Since Bill Wehrum and David Harlow started at EPA, they have both been recused from all particular matters where DTE is a party," Hewitt said.

Hunton is also home base for UARG, a former Wehrum client.

Earlier this month, Rep. Pallone **asked** Hunton for all communications between firm members and Wehrum, Harlow and 20 other past and present EPA employees. Alongside concerns that Wehrum and Harlow, his former firm partner now at EPA, "may have violated federal ethics rules by helping reverse EPA's position" in the DTE litigation, Pallone wrote that the air office appeared to have an agenda "remarkably similar" to that of UARG.

In separate requests, Pallone also sought records from DTE and seven other power producers, setting in all cases an April 25 deadline for responses. A committee spokeswoman told E&E News that the panel has received initial responses from all those who received a letter as part of its UARG investigation.

DTE, citing a planned shift away from coal-fired generation, recently dropped out of UARG but continues to use Hunton for representation in "a number of legal matters," according to a spokesman.

Wehrum received ethics advice on giving speeches to former employers and clients. On the day before he left the federal government, Minoli sent an **email** sharing direction from the Office of Government Ethics with the air chief.

"This memo gives an appointee some additional ability to make such speeches and presentations, but also establishes an absolute prohibition on such speeches or presentations when the event would have a 'demonstrable financial effect on the former employer or client,'" Minoli said.

OGE guidance states government employees are barred from giving speeches to organizations that may help develop their business "such as a seminar for current or prospective clients."

https://www.eenews.net/greenwire/2019/04/29/stories/1060241291

CHEMICAL WATCH ARTICLES

Mexican plan to include chemical management strategy

Joint work across agencies, industries, academia and NGOs agreed

30 April 2019 / Mexico

A conference in Mexico has agreed to update the country's action plan to implement the Rotterdam Convention. And the national consultative meeting, held earlier this month, heard that this will include "an entire strategy for the management of chemical substances and pesticides".

The event, in Mexico City, agreed that the environment ministry (Semarnat) will work jointly with other government agencies, industry, civil organisations and academia on the plan.

The meeting participants, drawn from research institutes, industry, NGOs and government agencies, made commitments to help the exchange of information on the use of dangerous substances.

Erick Jiménez, director general of comprehensive management of hazardous materials at the ministry, said the chemicals strategy will work "in synergy with multilateral environmental treaties and [will be] aligned with the National Plan Development 2019-2024".

Semarnat said in a statement that the plan would include strengthening and updating chemical registration, risk assessment and ensuring "comprehensive management" throughout the lifecycle of substances, from import to disposal.

According to the ministry, the consultative meeting acknowledged that tools for minimising the impact of dangerous substances on the environment and human health already exist in the national legal framework and international treaties.

However, it said the meeting identified that "historically the measures for their control and surveillance have not been effective, and there are areas of opportunity that require prompt attention".

USMCA

The recently negotiated US-Mexico-Canada Agreement (USMCA) saw the inclusion of a sectoral annex on chemical substances that was absent in the original North American Free Trade Agreement (Nafta).

This promotes a risk-based approach to regulation, directing the three countries to align their risk assessment and management measures within their legal frameworks.

Chemical industry groups in the three countries coordinated the writing of the annex and applauded its inclusion.

However, Guillermo Miller Suárez, vice president of information and international trade for the Mexican chemical industry group ANIQ, told Chemical Watch the annex is simply a regulatory cooperation document, not an indication of something more.

The Rotterdam Convention is a multilateral UN treaty to promote shared responsibilities in relation to the import of hazardous chemicals.

Related Articles

- Risk-based chemicals management approach promoted in new Nafta
- North American trade deal backs risk-based approach to chemicals regulation
- Country Focus: Industry sees USMCA as chance to prod Mexican chemical management

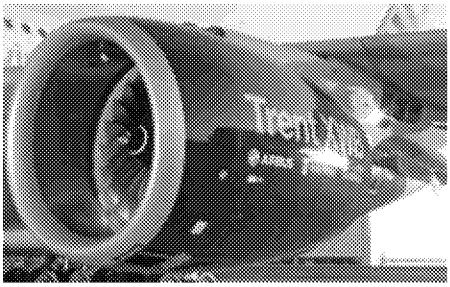
- **Further Information:**

- Semarnat statement
- Rotterdam Convention

Aerospace organisation releases substance reporting tool

Aims to address 'inefficiencies' in gathering data

30 April 2019 / Aerospace, automotive & engineering, Data, Global



The International Aerospace Environmental Group (IAEG) has released a tool to help the global aerospace and defence industry and their supply chains gather and report on substances and materials.

The tool aims to "meet the demands of increasingly complex, global chemical substance regulations and restrictions," says the IAEG. Through regulations, such as the EU's REACH, aerospace and defence industry companies must report product-related substance data.

The tool, called the Aerospace and Defence Substance Reporting Tool (AD-SRT), is a Microsoft Excel-based tool that allows companies to capture and report information related to substance declaration. It includes the following data fields:

- information about the supplier;
- product information; and
- substance information, including the chemicals contained in the supplied product, used in product development or required for product operation or maintenance.

The IAEG, which is a non-profit organisation of global aerospace companies, says that in providing substance data to various customers, suppliers must often respond to multiple requests in different formats with data obtained from upstream suppliers.

"This results in inefficient data collection, increasing costs and time-to-market risks for the industry," it says.

This inefficiency also interferes with the suppliers' ability to respond with adequate data accuracy, which it says "places a strain on the customer-supplier relationship". It also risks final products being non-compliant.

"Suppliers are burdened with various declaration requests in multiple formats from their customers," says Sally Gestautas, chair of the IAEG.

The AD-SRT "provides a standard tool to help them more efficiently fulfil their reporting requirements," she says.

The new tool is designed to work with the Aerospace and Defence Declarable Substances List (AD-DSL), which contains substances of interest to the industry, including those that are regulated or which may become regulated.

The IAEG says it is also compatible with the recently released IPC1754 standard, 'Materials and Substances Declaration Standard for Aerospace and Defence and Other Industries.'

Leigh Stringer
Global Business Editor

Further Information:

- AD-SRT

Taiwan proposes changes for labelling 'medicinal' cosmetic products

30 April 2019 / Personal care, Taiwan

Taiwan has notified the WTO of an update to the labelling requirements for cosmetic products that include words such as 'medicinal', 'medicine' and 'medicate'.

The draft regulation proposes that the outer packaging or container must display text that makes clear the product is a cosmetic and does not have medical efficacy.

The proposed date of entry into force is 2 May 2020 with the date of adoption to be determined.

Further Information:

- WTO notification

Expert Focus: Brexit, UK-REACH and the impact on Ireland

30 April 2019 / Brexit, Ireland, REACH

Jason Milne, a Dublin-based law partner in A&L Goodbody's environmental and planning group, examines what Brexit means for Ireland's chemical sector.

31 October is the new date fixed in UK and EU law for the UK's departure from the bloc. At this stage, the terms remain unsettled. The Withdrawal Agreement, agreed in draft with the EU at the end of 2018, has now been rejected three times by the UK Parliament. EU leaders insist that, by 31 October, the UK must choose whether to ratify the exit treaty, opt for a no-deal Brexit or cancel its departure.

Although several outcomes are achievable, there is a possibility that the UK will exit the EU without any agreed withdrawal terms. While the UK Parliament rejected the possibility of a no-deal Brexit, it does not definitively rule out the possibility. This remains the default position under UK and EU law.

A no-deal Brexit would mean an abrupt end to the UK's membership of the EU, with the immediate cessation of UK participation in various EU institutions and regimes. This includes the REACH regime.

EU-REACH under the Withdrawal Agreement

Under the Withdrawal Agreement (if it were to be ratified eventually), the post-Brexit regulatory framework in the UK would stay broadly the same for a transitional period. The agreement provides for that transitional period to last 21 months. The UK would continue to participate in REACH during the transition and:

- the process for registering new chemicals under REACH would remain the same;
- the UK would recognise all new registrations, approvals, authorisations and classifications granted by the EU; and
- registrations, approvals, authorisations and classifications in place before the UK leaves the EU would continue to be valid.

Brexit impact on Irish companies

The majority of Irish chemical products come from the UK and most Irish companies are downstream users of chemical products under REACH, CLP and the Detergent Regulations.

> *'For a great many substances, there is no other option available to Irish companies other than continuing to buy UK chemicals'*

For a great many substances, there is no other option available to Irish companies other than continuing to buy UK chemicals. Of the 22,119 substances registered under REACH, 1,181 are registered in the UK only.

This highlights the key issue for Irish companies in terms of REACH. Many rely on UK registrations for their supplies of chemicals. However, post-Brexit, the UK will become a 'third country', meaning UK REACH registrations will become non-existent. The UK authorities will no longer be able to access to the Echa databases and will no longer participate in EU regulatory and decision-making processes.

The UK government has promised that EU-REACH registrations held by UK-based entities will be automatically 'grandfathered' into the UK-REACH system from the same time. So, there should be no disruption in supplies from the continent caused by the new regulatory system alone.

The potential change post-Brexit in legal status for Irish companies to importers means that, apart from registration requirements, those companies will have responsibilities for:

- the safety of products;

- ensuring documentation is supplied, such as safety data sheets; and
- ensuring that products are correctly labelled.

Accordingly, companies may want to source products from other EU suppliers. They may also need to consider where their distributors are sourcing their supplies from.

Apart from sourcing other suppliers from the EU-27, the option for Irish companies is to employ a person competent in REACH and CLP. This is to ensure products imported from the UK are compliant, and become an EU importer, which may open up further market opportunities.

Questions Irish companies need to be asking themselves are:

- Do they source substances from a UK-based supplier?
- Are they downstream users, relying on a UK-based only representative (OR)?
- Are they reliant on an Irish distributor who sources from the UK?
- Are they reliant on authorisations granted to a UK company?
- Can they change supplier to another EU member state? And;
- Are they in a position to take on the role of importer if they continue to source in the UK?

UK-REACH under no-deal

Unless other arrangements have been made, in the event of a no-deal Brexit, the UK must immediately implement its own chemicals regime.

In such a scenario, EU-REACH will effectively be brought into UK law. This means that the new UK-REACH would retain the key principles of EU-REACH.

New chemicals placed on the European market will therefore need two separate registrations, one for EU-REACH and one for UK-REACH.

Obligations of non-UK businesses under UK-REACH

Under EU-REACH, non-EU/EEA companies do not have any have direct obligations, as those entities are not subject to the jurisdiction of any EU institutions or any EU member state. Any chemical substances marketed to the EU/EEA become subject to EU-REACH on entry into the region. To avoid a requirement for the registration of EU-based importers under EU-REACH, EU-REACH allows non-EU/EEA entities to appoint an OR to register a substance on behalf of its non-EU/EEA principal.

> *'An existing EU-REACH registration held by an Irish-based OR, on behalf of a US chemical manufacturer, will not be grandfathered into UK-REACH'*

If and when UK-REACH comes into effect, existing EU-REACH registrations submitted by an OR will not be automatically grandfathered into the new UK framework. As mentioned above, grandfathering will only apply with some information filing obligations to existing EU-REACH registrations or authorisations held by UK-based entities (including UK-based ORs). For example, an existing EU-REACH registration held by an Irish-based OR, on behalf of a US chemical manufacturer, will not be grandfathered into UK-REACH.

Non-UK manufacturers exporting to the UK post-Brexit may decide to appoint a UK-based OR to take on UK-REACH obligations post-Brexit. If they do not, then UK-based businesses importing substances from non-UK suppliers may (subject to volume thresholds) have an obligation to obtain and hold a UK-REACH registration. Such UK importers may currently be relying on the UK REACH registrations of EU/EEA-based companies.

To ensure immediate post-Brexit continued access to the UK market and to maintain supply chains, the UK Health and Safety Executive (HSE) is proposing to implement a relatively light-touch 'notification' system before full registration obligations are applied to such UK importers. The specified information will have to be provided to the HSE within 180 days of UK REACH coming into effect.

Any UK-REACH registration by an OR on behalf of a non-UK principal within 180 days of Brexit would see UK importers regain the status of downstream users within UK-REACH. In addition, they would not need to become registrants themselves. The UK importers would be relieved of their duty to notify the HSE within 180 days.

In the example above of a US chemical manufacturer, to enable it to continue to import into the UK post-Brexit, its UK-based customers would either need to:

- register under UK-REACH (as UK importers); or
- the US chemical manufacturer could itself use a UK-based OR to effect a UK-REACH registration (which the UK importers could then rely upon).

Current UK downstream users of an EU-REACH authorisation held by an EU/EEA company will continue, under UK-REACH, to use that substance in accordance with that authorisation after the UK leaves the EU, provided they meet certain notification requirements. That element of existing UK/EU/EEA supply chains should not be materially impacted.

Importantly, EU-REACH registrations and authorisations which are pending when UK-REACH comes into effect will not be recognised by UK-REACH. New applications will need to be made under UK-REACH.

Conclusion

In terms of supply in to the Irish market, UK manufacturers and suppliers have various options. These including transferring their operations and registrations to other EU member states (this must be a legal-entity change and must happen before the UK withdrawal). The advice to Irish companies is to talk to UK suppliers to find out which options they are considering.

Echa opened a 'Brexit window' within the REACH-IT system to enable UK firms to make changes ahead of time. The alternative is for EU-27 based clients of UK suppliers to register as importers, a prospect that would encourage them to look elsewhere to meet their chemical requirements.

Now that the European Council has changed the UK withdrawal date to 31 October, Echa has advised companies to continue their preparations for the UK withdrawal without a transition period. The Brexit window will stay open, subject to further developments.

Given the continued uncertainty around Brexit, businesses should continue to closely monitor developments and seek to identify how they may be impacted by changing circumstances, including the potential implementation of UK-REACH.

The opinions expressed in this article are those of the author and do not necessarily reflect Chemical Watch's views.

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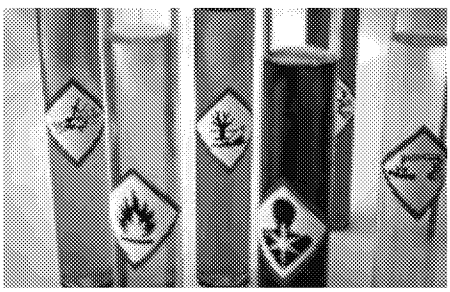
Commission 'refines' position on rebrander CLP notification obligations

But stakeholders raise question of enforceability

30 April 2019 / Accidents, emergency response & poison centres, CLP Regulation, Europe



The European Commission has made "refinements" to its position that relabellers and rebranders of chemical mixtures are classified as distributors.

The revision comes after industry said the Commission's interpretationcould be a "major problem".

Rebranders or relabellers are companies that may change the name or label of a product when, for instance, placing it in a different member state.

Article 45 of CLP stipulates legal obligations regarding notifications imposed on importers and downstream users of chemical mixtures. And, under Annex VIII of the Regulation, they are also required to notify nationally appointed bodies

– poison centres – if they are placing hazardous substances on the market by set deadlines, the first of which is 1 January 2020.

However, distributors are exempted from any such legal obligations.

In a paper circulated ahead of the meeting of the Competent Authorities for REACH and CLP (Caracal) on 19-20 March, the Commission reiterated its stance that rebranders and relabellers should be considered as distributors and not downstream users under CLP and REACH.

Consequently, they are not duty-holders pursuant to CLP Article 45 and do not have any direct obligations based on that Article.

Should a rebrander, relabeller, or other distributor, place on the market a mixture for which no notification has been made by that actor in the supply chain, they "could therefore *not* be held responsible for breach of that Article read in isolation".

However, the paper added, all distributors, including rebranders and relabellers, have to comply with CLP Article 4(10), which prohibits the placement of a mixture on the market unless it is CLP-compliant.

Although a distributor has no direct notification obligation under Article 45,they also "have no right" to either distribute a mixture in a different member state than the one purchased from, or distribute with a different product identifier than that of the supplier, "without previously making sure that the relevant appointed body has access to the relevant emergency health information".

That is because both those actions could have the result that (alleged) previous compliance with Article 45 would "suddenly turn" to noncompliance because of the distributor's own placing on the market.

In such a case, the Commission said, the distributor would have placed the mixture on the market in breach of Article 4(10), and face possible penalties.

Enforceability

In separate papers following the Caracal meeting, industry stakeholders largely gave their support to the clarifications, but raised questions about enforcement and the need for a more permanent solution.

Spain's Ministry of Justice said that the legal responsibility of the 'actor' (as 'placer' on the market) is "indirectly considered" in Article 4(10), whereas Article 45 "clearly defines" the duty holder as the 'actor' responsible of providing the appropriate information (in agreement with Annex VIII) of the 'product' to appointed bodies. Therefore, it said, "in terms of enforcement, prevalence of Article 4 (10) over Article 45 may be uncertain".

Taking everything into account, it added, the answer "for the time being would probably be to redefine 'duty holder' under Art.45 by including further 'actors' liable to interfere with the task of 'urgent and reliable identification' of the mixture/product in case of poisoning".

Germany is of the view that Article 4 (10) "constitutes an objective obligation, which means that it can be enforced", for instance, by way of administrative orders, regardless of the actors' knowledge of the non-compliance. "Only when

deciding on imposing sanctions, it would be relevant if the person placing a product on the market has acted intentionally or negligently in breach of the obligation."

Meanwhile, Belgium's environment ministry said it does not agree with the current commission's interpretation of a downstream user. It considers that a rebrander is a downstream user under CLP. "With all the responsibilities coming with this status, the enforcement is made accordingly" in Belgian territory, it added.

'Temporary' solution

Norway's Environment Agency said it would consider the Commission's position as a "temporary solution" to restrict products being placed on the market without poison centres having access to necessary information. In the longer term, it added, a permanent solution should be sought via an amendment of Article 45.

The Irish Health and Safety Authority and Poisons Information Centre of Ireland echoed the point. The latter said the amendment should reflect "that the company mentioned on the mixture label is responsible for declaring the composition of the mixture to the appointed body, or for ensuring that their supplier has done so".

The proposed solution, it added, will potentially leave information gaps until 2025, at which time all mixtures must be notified in the new format. For example, where a distributor notifies a product from another supplier, the optimal solution would be that the UFI of the original mixture is included in the notification. "This would ensure that the toxicological and compositional information, related to the UFI, for that mixture, remains consistent."

However, until 2025, mixtures already notified before the various Annex VIII deadlines probably will not have a UFI assigned, it added. "This means that it would not be possible to link the new 'product' with the formulation for the original mixture unless the distributor asked their supplier to make a new notification, including the UFI, for that original mixture."

Luke Buxton
Europe editor

Related Articles

- Interpretation of rebrander CLP notification obligations a 'major problem'
- EU Commission publishes CLP poison centres amendment
- CLP report examines poison centre mixture provisions issue

- **Further Information:**

- Spain paper
- Germany paper
- Belgium paper
- Norway paper
- Ireland HSA paper
- Ireland Poison Centres paper

Canada clears diisocyanate IPDI, fatty amides

30 April 2019 / Canada, Environmental Protection Act, Risk assessment

The Canadian government has concluded that IPDI (isophorone diisocyanate) and three substances in the fatty amides group, are not harmful at current exposure levels.

The 27 April final screening assessments confirm the conclusions of both the IPDI and fatty amides draft assessments, published in early 2018.
The three fatty amides are:

- erucamide or 13-docosenamide, (Z)-;
- oleamide or 9-octadecenamide, (Z)-; and
- isooctadecanoic acid, reaction products with tetraethylenepentamine (IODA reaction products with TEPA).

None meet any of the criteria set out in section 64 of the Canadian Environmental Protection Act (Cepa) so no follow-up regulatory risk management measures are planned.

Related Articles

- Diisocyanate IPDI not harmful, draft Canadian assessment concludes
- Canadian draft assessment proposes clearing three fatty amides

- **Further Information:**

- IPDI assessment
- Fatty amides assessment

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EPA Issues Draft Interim PFAS Guidelines for Public Comment - JD Supra (press release)

Albany set to pass yet another jobs-killer
New York Post
Advocates have been pushing this measure for years now, originally citing the feds' decades-long failure to update the **Toxic Substances** Control Act.